

September 2, 2016

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Communication in MB Docket No. 16-41

Dear Ms. Dortch:

I write on behalf of the American Cable Association to respond to a letter recently filed by the National Association of Broadcasters.¹ NAB urges the FCC to “reject ACA’s cynical view, which facilitates the ability of pay TV operators to discriminate against ‘urban’ or ‘Spanish-language’ channels.”² The true cynicism here, however, lies in NAB’s unfortunate and inaccurate characterization of ACA’s position.

Last week, ACA filed a letter in this docket proposing questions that the Commission might ask in any diversity-related rulemaking.³ Among the dozens of questions contained in that letter was the following:

“Should the Commission restrict bundling offers or demands directed only at certain parties, such as . . . [b]undling of a particular channel with respect to MVPDs without subscribers likely to express interest in that channel (such as the forced bundling of a Spanish-language channel for cable systems with very few Spanish-speaking customers; or the forced bundling of an urban-interest channel for rural cable systems).”⁴

¹ Letter from Rick Kaplan to Marlene Dortch, MB Docket No. 16-41 (filed Sept. 1, 2016) (“NAB Letter”).

² *Id.* at 2.

³ *See* Letter from Michael Nilsson to Marlene Dortch, MB Docket No. 16-41 (filed Aug. 26, 2016) (“ACA Letter”).

⁴ *Id.* at 4.

NAB characterizes this question as “extremely disturbing” and as having “clear and extremely unfortunate exclusionary effects.”⁵ It describes ACA as suggesting that certain multicast channels “would only be welcome on a system with a large number of African-American subscribers” and that “Spanish-language programmers should be stymied in their efforts to introduce new channels.”⁶ NAB thus accuses ACA of encouraging MVPDs to “segregate their programming lineups according to race or ethnicity.”⁷

No fair reading of ACA’s letter—or of ACA’s broader advocacy—can support such an accusation. As ACA has repeatedly explained, it believes that the business imperatives of small cable operators align considerably with the Commission’s diversity interests.⁸ Among these business imperatives is the desire to choose programming without regard to who owns that programming.⁹ In ACA’s view, overall diversity *increases* where hundreds of small cable operators can each choose to devote their limited capacity to programming that they believe their subscribers will want.¹⁰ By contrast, overall diversity *decreases* where a handful of national programmers can force small cable operators to carry their programming to the exclusion of independent programmers.¹¹ Diversity thus increases where, for example, a Miami small cable operator can choose an independent Spanish-language channel instead of Viacom’s TeenNick, a channel largely duplicative of Nickelodeon.¹² Likewise, diversity increases where a rural small cable operator can choose the independent World Fishing Network instead of the Esquire Network, an NBCU offering aimed at the “more upscale, affluent, urban-dwelling guy.”¹³

We fail to see how anyone familiar with ACA and its decade-long advocacy on forced bundling can read its proposed question as supporting discrimination. We are especially surprised to see NAB characterize ACA’s position in this manner, given the “right to reject” rule allowing a broadcast television station to reject network programming that it deems to be “unsatisfactory or

⁵ NAB Letter at 1.

⁶ *Id.* at 1-2.

⁷ *Id.* at 2.

⁸ Comments of the American Cable Association, MB Docket No. 16-41 at 7 (filed Mar. 30, 2016) (“ACA Comments”).

⁹ *Id.*

¹⁰ *Id.* at 19.

¹¹ *Id.* (explaining that forced bundling results in reduced carriage of independent programming).

¹² *Id.* at 20.

¹³ *Id.*; see also Brian Steinberg, *Esquire Network Seems Out of Style on TV Scene*, VARIETY (June 7, 2013), <http://variety.com/2013/tv/news/esquire-network-seems-out-of-style-on-tv-scene-1200493866/>.

unsuitable or contrary to the public interest” and to substitute “a program which, in the station's opinion, is of greater local or national importance.”¹⁴

As for the merits of the issue, NAB would have the Commission believe that allowing a handful of programming conglomerates to dictate the programming seen by viewers nationwide promotes diversity. We disagree. So too do the independent programmers themselves, including the Hispanic Information and Telecommunications Network and the Aspire Channel (which focuses on African-American audiences).¹⁵ As INSP put it: “[T]he availability of a large number of channels, even if they covered every conceivable programming niche, would not fulfill Congress’ goal when the overwhelming majority of those channels are owned or controlled by a handful of media conglomerates.”¹⁶

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Pursuant to the Commission’s rules, I will file one copy of this letter electronically in MB Docket No. 16-41. Should you have any questions, please contact me.

Respectfully submitted,



Michael Nilsson

¹⁴ 47 C.F.R. § 73.658(e).

¹⁵ See Comments of Hispanic Information and Telecommunications Network, Inc., MB Docket No. 16-41 at 5 (filed Mar. 30, 2016); Comments of Aspire Channel, LLC and Up Entertainment, LLC, MB Docket No. 16-41 at 2-4 (filed Mar. 30, 2016).

¹⁶ Comments of INSP, LLC, MB Docket No. 16-41 at 9 (filed Mar. 30, 2016).